

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 1:21-CR-57  
(Judge KleeH)

DIANN CAROL CLARK,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
CONCERNING PLEA OF GUILTY IN FELONY CASE [DKT. NO. 18],  
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On November 4, 2021, the Defendant Diann Carole Clark ("Clark"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count One of the Information, charging her with Willful Failure to Collect or Pay over Employment Tax, in violation of Title 26, U.S.C., Section 7202. This Court referred Defendant's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted. Clark stated that she understood that the magistrate judge is not a United States District Judge, and Clark consented to pleading before the magistrate judge.

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Based upon Defendant Clark's statements during the plea hearing and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Defendant Clark was competent to enter a plea, that the plea was freely and voluntarily given, that she was aware of the nature of the charges against her and the consequences of her plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [Dkt. No. 18] finding a factual basis for the plea and recommending that this Court accept Defendant Clark's plea of guilty to Count One of the Information.

The magistrate judge **released** Defendant on the terms of the Order Setting Conditions of Release. [ECF No. 17].

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither the Defendant nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [Dkt. No. 18], provisionally **ACCEPTS** Defendant Clark's guilty

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plea, and **ADJUDGES** her **GUILTY** of the crime charged in Count One of the Information.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the presentence investigation report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** the following:

1. The Probation Officer shall undertake a presentence investigation of Clark, and prepare a presentence investigation report for the Court;

2. The Government and Defendant Clark shall each provide their narrative descriptions of the offense to the Probation Officer by **December 14, 2021**;

3. The presentence investigation report shall be disclosed to Defendant Clark, counsel for Defendant, and the Government on or before **February 14, 2022**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence investigation report on or before **February 28, 2022**;

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5. The Office of Probation shall submit the presentence investigation report with addendum to the Court on or before **March 10, 2022**; and

6. Counsel may file any written sentencing memorandum or statements and motions for departure from the Sentencing Guidelines, including the factual basis for the same, on or before **March 24, 2022**.

The Court further **ORDERS** that prior to sentencing, counsel for Defendant review with her the revised Standard Probation and Supervised Release Conditions adopted by this Court on November 29, 2016, pursuant to the standing order entered by Chief Judge Groh, In Re: Revised Standard Probation and Supervised Release Conditions, 3:16-MC-56.

The Court will conduct the **Sentencing Hearing** for Defendant on **April 11, 2022**, at **10:00 A.M.**, at the **Clarksburg, West Virginia** point of holding court. If counsel anticipates having multiple witnesses or an otherwise lengthy sentencing hearing, please notify the Judge's chamber staff so that an adequate amount of time can be scheduled.

It is so **ORDERED**.

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The Clerk is directed to transmit copies of this Order to  
counsel of record and all appropriate agencies.

DATED: December 2, 2021

/s/ Thomas S. Kleeh  
THOMAS S. KLEEH  
UNITED STATES DISTRICT JUDGE